

**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF WASTE MANAGEMENT POLICY 00-03**

related to
Supplemental Environmental Projects
July 20, 2000

Background

KDHE has the statutory authority to issue penalties and administrative orders to any person who violates Kansas Environmental Statutes or Regulations. The administrative order may direct the violator to take actions, pay penalties, or create procedures to lessen or eliminate the threat to human health and the environment caused by the violation. Each statute also allows the respondent to appeal an administrative order. K.S.A. 77-505, within the Kansas Administrative Procedures Act (KAPA), allows for the settlement of administrative orders. KDHE may offer certain respondents the option of performing a Supplemental Environmental Project (SEP) in lieu of issuing an administrative penalty order. SEPs may either be proposed by the respondent or suggested by the bureau.

Section I
ELIGIBILITY

1. Timeliness- The respondent must propose the SEP at least four weeks before the scheduled hearing of the case. The proposal of a SEP cannot be used as a tactic to delay the commencement of a scheduled hearing.
2. Compliance history- Inspection records and regulatory compliance records with KDHE and/or other state or federal environmental agencies will be used to determine the respondent's compliance history. This history will be used in determining the minimum SEP cost, as outlined in Section III of this policy.
3. Compliance status- The respondent must have corrected the violations cited during the inspection before KDHE will approve a SEP proposal.
4. Technical and economic capability- The respondent must be technically and economically capable of completing the proposed SEP. Proof of this capability may require submission of company financial information as part of the SEP.
5. Environmental benefits- The respondent must estimate the environmental benefits that will accrue from the SEP. Completion of the SEP should result in the intended effect. Full documentation of the completed SEP will be required.
6. Economic benefit of noncompliance- KDHE may deny the SEP proposal if it determines respondent gained a significant economic benefit by violating the statutes and regulations.

Section II
PROJECT CRITERIA

1. A SEP may not be allowed if the primary objective and result is the improvement of the respondent's economic self-interest.
2. The proposed SEP must improve the damaged environment or reduce the total risk posed to human health and the environment caused by the respondent's business or operations.
3. The proposed SEP should, if at all possible, directly relate to improving hazardous waste management issues or waste handling problems within the industry in which the violation took place.
4. Activities that may be required by statute or regulation or that may be obtained as injunctive relief by KDHE pursuant to applicable statutory or case law shall not be eligible as a SEP.
5. A respondent may propose to pay a portion of the penalty amount and conduct a SEP for the remaining portion of the penalty amount using the appropriate multiplier.

Section III
PROJECT COSTS

1. The total cost of the SEP must equal or exceed three times the amount of the assessed penalty for KDHE to consider a waiver of the entire penalty, unless the respondent meets the definition of a "small business" as follows:
 - a. (i) On a company-wide basis, the facility annually employs 100 or fewer full time individuals or full time equivalents, and, if the violation is a hazardous waste violation,
(ii) The facility routinely generates less than 1000 kilograms of hazardous waste in a calendar month, or
 - b. Solid waste processing and/or disposal facility which receives not more than an annual average of 20 tons per day of solid waste.
2. If the facility meets the above definition of a "small business" as outlined above, the total cost of the SEP must equal or exceed two times the amount of the assessed penalty for KDHE to consider a waiver of the entire penalty.
3. For repeat offenders, the dollar amount of the SEP must be as follows:
 - a. In the case of repeat offenders with violations not resulting in actual pollution or harm to the environment, the total cost of the SEP must equal or exceed four times the amount of the assessed penalty.
 - b. In the case of repeat offenders with violations resulting in actual pollution or harm to the environment, the total cost of the SEP must equal or exceed five times the amount of the assessed penalty.

Section IV **OUTCOMES**

1. The results of the SEP must be verifiable and measurable. The respondent must propose how the results of the SEP will be determined and documented. Review and approval of completion will be the responsibility of the TSS/BWM Section Chief with assistance from BEFS staff. In some cases, a third party audit or verification may be required.
2. Proposal of any SEP must contain a detailed scope of work. The scope of work must include a description of tasks, a timetable or schedule, an itemized cost estimate, and identify who will perform the work on the SEP.

Section V **CATEGORIES OF ELIGIBLE PROJECTS**

1. Projects determined to be eligible as a SEP will fall into one of the following categories:
 - C Waste prevention
 - C Waste reduction
 - C Environmental restoration and protection
 - C Environmental audits
 - C Public awareness
 - C Environmental compliance promotion
 - C Emergency planning and preparedness

Waste prevention- A waste prevention SEP would prevent the generation or creation of pollution or hazardous waste. Waste prevention SEPs also include projects which protect natural resources through conservation or increased efficiency in the use of energy, water or other materials. Innovative technology or a change in manufacturing processes to eliminate production of a waste stream would be examples of waste prevention SEP. Waste prevention SEPs do not include projects that transfer pollution from one media to another.

Waste reduction- This type of SEP goes substantially beyond compliance with allowable discharge limitations to reduce the amount and/or toxicity of waste discharged into the environment. Examples would include stack emissions reduction technology or residuals recycling. A substitute of one industrial substance for another may be used if it is demonstrated that the substitute material is non-polluting. An action required by regulation could be used if completion of the SEP would occur at least 24 months ahead of the regulatory schedule.

Environmental restoration and protection- An environmental restoration and protection project is one which enhances the condition of an ecosystem or geographic area. These projects may be used to restore or protect natural or man-made environments provided such activities are not otherwise legally required. An environmental restoration and protection SEP can include removal/mitigation of contaminated materials such as asbestos or lead paint or solid waste, or establishing, maintaining a community program designed to enhance recycling efforts or promote waste minimization activities

within the community/local area, restoring wetlands area(s), or the creation or maintenance of certain recreational improvements promoting environmental awareness, such as hiking or biking trails, within the community.

Environmental audits- A typical environmental audit that is a routine business practice will be acceptable as a SEP only if a similar audit has not previously been performed or has not been scheduled to be performed at the facility. An audit designed to identify problems or improve existing management or environmental practices may be an acceptable SEP. Other Kansas facilities owned and operated by the respondent may be included in this audit. If problems discovered by an audit can be resolved, the solution must be implemented as a part of the SEP. Results of the audit, and any corrections implemented, must be provided to KDHE within an agreed upon time frame.

Public awareness- A public awareness SEP must show to the regulated community the importance of compliance with the environmental laws and regulations or must disseminate technical information about compliance. The public awareness SEP should be related to the type of violation the respondent committed. It must be publicly stated in a prominent manner that the SEP was undertaken as part of a settlement to an enforcement action by KDHE.

Environmental Compliance Promotion- An environmental compliance promotion SEP provides training or technical support to other members of the regulated community to either: (1) identify, achieve, and maintain compliance with the solid and/or hazardous waste statutes and regulations; or (2) provide information on methods to reduce the generation, release or disposal of pollutants beyond legal requirements. The primary focus of the project should be on the same regulatory program where the violations occurred.

Emergency Planning and Preparedness- An emergency planning and preparedness project provides assistance to a responsible state or local emergency response or planning entity. The assistance would be in a form to help the organization fulfill their obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA). It is preferable that these projects be conducted within the same emergency planning district.

Section VI GENERAL CONDITIONS

1. The respondent must sign a written consent agreement and final order. The final order will set forth the agreement to hold the penalty in abeyance until the SEP is completed. It will also contain the terms of the SEP. The consent agreement and final order will contain language that make the terms enforceable pursuant to the Kansas Judicial Review Act if the SEP is not completed successfully and within the guidelines and timetables contained in the agreement.
2. Failure to complete the SEP within the deadline established in the final consent agreement could result in the reinstatement of the original penalty as a final order. The original penalty will be held in abeyance as part of the settlement, but will not be dismissed or waived until KDHE determines that the SEP has been successfully completed. The SEP should have a completion time of twenty-four months or less. However, KDHE will consider SEPs of longer duration if the complexity of the SEP, or other factors agreed upon by KDHE, require additional time.

3. Any costs involved in third party oversight of a SEP will be borne by the respondent. KDHE reserves the right to require third party oversight or monitoring of the SEP if necessary. Specific, periodic reports must be submitted to KDHE by any third party monitor.
4. The respondent must provide all the necessary documents to substantiate costs of each SEP(s). Documents that need to be provided may include: invoices, receipts, copies of canceled checks for purchases, and payroll and time accounting for employees participating in the project. In most cases, quarterly reports will be required to be submitted to KDHE to document progress of the project.
5. At the completion of a SEP, each respondent will be required to submit a final report. This report will detail the project from start to finish, costs associated with the project, and document the environmental benefits that were gained by completion of the project , e.g. waste minimization.

Section VII **CONCLUSION**

This policy provides guidance in determining the feasibility of the creation and use of a SEP and is not intended to recognize or offer any statutory or due process right to any respondent to obtain a SEP. SEPs are offered only as a settlement provision at the absolute discretion of KDHE. The terms of any particular SEP agreement are dependent upon the particular factual circumstances. The use of this guidance by staff of KDHE does not create any binding conditions upon KDHE and is not enforceable by the respondent or other member of the public.



William L. Bider
Director, Bureau of Waste Management

7-20-00
Date